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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

SINGH, ARTI R

ART UNIT PAPER NUMBER

1771

DATE MAILED: 01/31/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/500,535

Applicant(s)

BAYCHAR

Examiner

Ms. Arti R. Singh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on preamendment F1.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,9-11 and 14-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) 1,2,9-11 and 14-38 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

1. The response to the restriction requirement submitted by Applicant as paper no. 13F is considered non-compliant. Applicant was directed to choose a single species, not two. Please clarify which single species is being elected along with the exact claim numbers pertaining to that species as the response that was provided was confusing. The restriction has been provided again along with a 6th species from which Applicant may choose from. A shorten response time of 1 month has been set for this action.

Election/Restrictions

- 2.** Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I.** Claims 1, 2, 9-11, 14-16, 22-29 & 33-37 drawn to a composite laminate with moisture transfer properties, classified in class 442, subclass 370.
 - II.** Claims 17, 18, 30 & 38, drawn to a composite fabric with absorbent properties, classified in class 442, subclass 414.
 - III.** Claims 20 & 31, drawn to a composite fabric with a reinforcing layer, classified in class 442, subclass 30.
 - IV.** Claims 21 & 42, drawn to a foam with a spacer fabric, classified in class 428, subclass 304.4+.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions II and I are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions because they have different functions. Invention I functions by transferring moisture through the composite and Invention II functions by absorbing moisture.

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4. Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions as they have different effects. Invention III has a flexible mesh layer which provides structural integrity which invention I lacks.

5. Inventions I and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different effects. Invention IV has a spacer fabric between two foam layers which Invention I lacks.

6. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different effects, as Invention II has additional absorbent nonwoven layers while Invention III has an additional flexible mesh for structural integrity.

7. Inventions II and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different effects, as Invention II has an additional absorbent layer while Invention IV has an additional spacer fabric layer.

8. Inventions III and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case

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the different inventions have different effects, as in this case Invention III has a flexible mesh layer for structural integrity while Invention IV has a spacer fabric layer.

9. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

10. If Applicant chooses Group I then the Applicant must also elect a **single species**.

11. This application contains claims directed to the following patentably distinct species of the claimed invention:

- a 4 layer composite comprising an inner layer, a foam layer backed by a nonwoven sheet and a second foam layer (Claim 1 & 2);
- a 4 layer composite comprising an open cell foam, a first non-woven, a second open cell foam and a second nonwoven (Claims 17, 18, 30 & 38)
- a 3 layered composite comprising an inner layer, a foam layer and a nonwoven top sheet (claims 9, 10, 11, 23, 26, 29, 33, 35 & 36);
- a 2 layered composite comprising an inner layer and a foam layer (claims 14, 24, 27 & 34);
- A 3 layered composite comprising a nonwoven layer, foam and an outer layer (Claims 15, 16 & 19);
- A 2 layered composite comprising a foam and a nonwoven (claims 22, 25, 28 & 37)

Applicant is required under 35 U.S.C. 121 to elect a **single disclosed species** for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none generic.

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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered no responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

12. A telephone call was made to Mr. Shrinath Malur on 08/26/2002 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti R. Singh whose telephone number is 703-305-0291. The examiner can normally be reached on M-F 7:00am to 4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-873-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, appearing to be 'ARS' with a stylized flourish extending to the right.

Ms. Arti R. Singh
Patent Examiner
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ars
January 29, 2003